

1     been filed on April 26, 1993.

2             JUDGE SIPPEL:   Say that again?

3             MR. HUTTON:   A no change certification executed on  
4     March 31, 1993, and it appears to have been filed with the  
5     FCC on April 26, 1993.

6             JUDGE SIPPEL:   I'm just -- I'm having trouble  
7     following the dates on this.

8             MR. HUTTON:   Okay.

9             JUDGE SIPPEL:   Oh, I see where you are.   I'm  
10    sorry.   What is that?   April 23, 1993?

11            MR. HUTTON:   Oh, I'm sorry.   The FCC/Mellon stamp  
12    does appear to be April 23, 1993.   Below that there is a  
13    date of April 26, but that doesn't appear to be when it was  
14    filed.

15            JUDGE SIPPEL:   Which one are you referring to?

16            MR. HUTTON:   It looks to me like the date at the  
17    top where it says FCC/Mellon --

18            JUDGE SIPPEL:   Yes.

19            MR. HUTTON:   -- is April 23, 1993.   That would be  
20    the filing date.

21            JUDGE SIPPEL:   All right.   And that's just a one-  
22    page document, correct?

23            MR. HUTTON:   No.   It's a one-page form followed by  
24    a transmittal letter from counsel dated April 22, 1993,  
25    followed by a certification signed on behalf of Reading

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1 Broadcasting and dated March 31, 1993.

2 JUDGE SIPPEL: I follow.

3 MR. HUTTON: Okay.

4 JUDGE SIPPEL: Then we have a blue separator and  
5 your next item is?

6 MR. HUTTON: The next item is an ownership report.  
7 The transmittal letter for the report is dated March 29,  
8 1994, and it appears to have been filed at Mellon Bank on  
9 March 31, 1994.

10 JUDGE SIPPEL: All right.

11 MR. HUTTON: Following the next blue separator,  
12 there is a no change certification. It appears to have been  
13 filed with Mellon Bank on March 16, 1995. There is a copy  
14 of the check for the filing fee, and then there is a one-  
15 page certification of no change dated March 9, 1995.

16 JUDGE SIPPEL: All right.

17 MR. HUTTON: Following the next blue separator,  
18 there is an ownership report on FCC Form 323. It appears  
19 from the first page to have been filed on April 1, 1997. It  
20 appears to have been -- well, I don't see a signature page  
21 on it. We may be missing the signature page.

22 JUDGE SIPPEL: Can you get us one?

23 MR. HUTTON: We'll look. I have to admit that  
24 neither the Commission's records nor the station's records  
25 are perfect.

1 JUDGE SIPPEL: Okay.

2 MR. HUTTON: All right, following the next blue  
3 separator, there is an ownership report. The cover letter  
4 for the report indicates a filing on April 1, 1998, or  
5 transmittal on that date. I don't see a -- in the second to  
6 the last page there is a stamp of FCC/Mellon of April 1,  
7 1998. This report also seems to be missing a signature  
8 page.

9 JUDGE SIPPEL: Okay. If you aren't able to find  
10 one, we want to -- I want to establish as a matter of record  
11 that there is none to be found.

12 MR. HUTTON: I'll find out what I can.

13 And the next one is, following the blue separator,  
14 there is an ownership report on FCC Form 323 for Reading  
15 Broadcasting, Inc. It is dated March 31, 1999, and  
16 following Exhibit 1 to the report there is a remittance form  
17 which is stamped April 1, 1999. And that completes Exhibit  
18 11 for Reading Broadcasting, Inc.

19 JUDGE SIPPEL: Is there any objection to its  
20 receipt into evidence?

21 MR. BECHTEL: None, sir.

22 JUDGE SIPPEL: Mr. Shook?

23 MR. SHOOK: No, Your Honor.

24 JUDGE SIPPEL: It's received, that's Reading  
25 Exhibit No. 11.

1     //

2     //

3     //

4                                 (The document referred to was  
5                                 marked for identification as  
6                                 Reading Exhibit No. 11, and  
7                                 received in evidence.)

8                 JUDGE SIPPEL:  Twelve?

9                 MR. HUTTON:  Exhibit 12 consists of tabs A, B and  
10       C.  Tab 1 is an extension of time to construct, or it's  
11       called "Extension or Replacement of Construction Permit."  
12       The grant date is October 2, 1998.  It's for WTVE Reading,  
13       Pennsylvania.  It's one page.

14                Tab B consists of a five-page letter dated April  
15       24, 1999, from Reading Broadcasting, Inc. to the Federal  
16       Communications Commission, and it has a stamp on it showing  
17       receipt by the FCC on April 26, 1999.

18                And tab C consists of a 31-page Memorandum,  
19       Opinion and Order by the FCC in MM Docket No. 98-43, and MM  
20       Docket No. 94-149.  It bears the release date of October 6,  
21       1999, and the FCC number on the document is FCC 99-267.

22                JUDGE SIPPEL:  Does it relate to Reading  
23       specifically?

24                MR. HUTTON:  Not specifically, but it relates to  
25       the current Commission policy on extensions of construction

1 permits such as Reading's construction permit.

2 JUDGE SIPPEL: Any objection?

3 MR. BECHTEL: No objection.

4 JUDGE SIPPEL: Mr. Shook?

5 MR. SHOOK: No, Your Honor.

6 JUDGE SIPPEL: Reading Exhibit 12 for  
7 identification is received in evidence as Reading Exhibit  
8 12. That includes tabs A, B and C.

9 (The document referred to was  
10 marked for identification as  
11 Reading Exhibit No. 12, and  
12 received in evidence.)

13 MR. SHOOK: Your Honor, there is something I would  
14 like to clarify with respect to tab C.

15 JUDGE SIPPEL: Surely.

16 MR. SHOOK: After the Commission Decision FCC 99-  
17 267, I have a number of pages from the Broadcasting and  
18 Cable Year Book.

19 Were those intended as part of --

20 MR. HUTTON: No.

21 MR. SHOOK: Oh, I've got the wrong -- I've got the  
22 tab in the wrong place then?

23 MR. HUTTON: No, the year book pages should not  
24 have been there. We should pull those.

25 JUDGE SIPPEL: Do I have those also?

1 MR. HUTTON: I don't know.

2 JUDGE SIPPEL: I have them as Exhibit 13. Oh,  
3 they are talking about something different. All I have is  
4 Exhibit 13.

5 MR. HUTTON: Jane. Wait a second.

6 (Pause.)

7 JUDGE SIPPEL: Has phantom material slipped into  
8 my exhibits here? All right.

9 You're not identifying foreign objects, right?

10 MR. SHOOK: Well, I can assure you no one from my  
11 office put it in because the hole punch is much to neat.

12 MR. HUTTON: All right. So the last page of  
13 Exhibit 12 should be the numbered page 31, the dissent of  
14 Commissioner Harold Prescott Roth.

15 JUDGE SIPPEL: Very well. So now we move on to  
16 Reading Exhibit 13 for identification.

17 MR. HUTTON: All right. Reading Exhibit 13  
18 consists of five pages from the Cable Station and Coverage  
19 Atlas, and this is all for the portion of Pennsylvania in  
20 which the station is located. The first one is for 1993,  
21 the second one is for 1992, the third is for 1991, the  
22 fourth is for 1990, and the fifth is for 1989.

23 JUDGE SIPPEL: Any objection?

24 MR. BECHTEL: No objection, sir.

25 JUDGE SIPPEL: No objection, Mr. Shook?

1           MR. SHOOK: I think I'm missing 1993, the first  
2 page that you described I don't have.

3           MR. HUTTON: Oh.

4           MR. SHOOK: I have '92, '91, '90 and '89.

5           MR. HUTTON: All right, you are missing a page.  
6 We'll get you the page.

7           MR. SHOOK: Yes, you can just give me the 1993  
8 page.

9           MR. HUTTON: Okay.

10          JUDGE SIPPEL: So it supposed to be 1989 through  
11 1993; is that right?

12          MR. HUTTON: Yes, yes.

13          JUDGE SIPPEL: I have them all.

14          MR. HUTTON: Okay.

15          JUDGE SIPPEL: They owe you a page?

16          MR. SHOOK: Yes, sir. We have no objection.

17          JUDGE SIPPEL: Be sure Mr. Shook gets his page.

18          We're going to receive Reading 13 into evidence at  
19 this time.

20                               (The document referred to was  
21 marked for identification as  
22 Reading Exhibit No. 13, and  
23 received in evidence.)

24          JUDGE SIPPEL: Now, that brings us to Exhibit 14,  
25 and I've looked at the materials, the page citations that

1 Mr. Bechtel has furnished to me, and I've also factored in  
2 that the only thing that Mr. Hutton is seeking to do is to  
3 get that one line or one column, rather, from table A on  
4 page 17 into evidence, on the average number of PSAs per  
5 day, radio and television, 22 and 22. Mr. Bechtel has  
6 raised a serious question about the reliability.

7 I'm going to give -- I'm going to give Reading 10  
8 days from today to put together -- to get an affidavit from  
9 the author, Brenda Helregel, or whoever did this work, to  
10 explain the methodology as to how they the 22 and 22, plus  
11 any other authorities. I'm not looking for a whole string  
12 cite of cases, but I mean, some specific cases as I saw this  
13 morning, which would support receiving that into evidence,  
14 and then I'm going to give Mr. Bechtel five days to reply to  
15 that, and we'll see what we can do with it.

16 MR. HUTTON: I appreciate your thoughts on that.  
17 We may just drop it.

18 JUDGE SIPPEL: Oh.

19 MR. HUTTON: So I'll take it under advisement.

20 JUDGE SIPPEL: Take it under advisement.

21 MR. HUTTON: Yes.

22 JUDGE SIPPEL: I will leave this in the record as  
23 a proffer.

24 MR. HUTTON: I'll let you know what we are going  
25 to do.

1 JUDGE SIPPEL: All right, but the report itself  
2 would not come into evidence. I would leave it as a proffer  
3 and take that one column, you know what I'm going to do, and  
4 I know what you're going to do, so you let me know --

5 MR. HUTTON: Okay.

6 JUDGE SIPPEL: -- how you want to proceed.

7 MR. HUTTON: Okay.

8 JUDGE SIPPEL: That's it for your documents then,  
9 I take it?

10 MR. HUTTON: That is.

11 JUDGE SIPPEL: It's 20 after two. Let's take a  
12 12-minute break up from 10 minutes. All right? Come back  
13 close to 2:30.

14 MR. COLE: Fine.

15 (Whereupon, a recess was taken.)

16 JUDGE SIPPEL: We can start now with the Adams  
17 exhibits.

18 MR. COLE: Yes, Your Honor.

19 Your Honor, I will be handling that for Adams this  
20 afternoon, and as a matter of preliminary housekeeping, if I  
21 may approach the bench, I'd like to provide Your Honor with,  
22 well, before I do that, let me explain what I am doing.

23 Pursuant to the informal off-the-record conference  
24 call conducted by Your Honor with counsel for Reading  
25 Broadcasting and Adams a couple of weeks ago, we have

1 prepared -- we have renamed, to a limited degree, the Adams  
2 exhibits as previously exchanged, and I am -- we have  
3 distributed to Reading Broadcasting and the Bureau recast  
4 title pages for the exhibits, and also a set of stickers to  
5 be applied over the existing stickers on the binders  
6 previously distributed in order to bring these all up to a  
7 conformity with what we talked about during the conference  
8 call and what we will be talking about here.

9 And if may approach the bench, Your Honor, I'd  
10 like to provide you with a copy of the same recast title  
11 pages and stickers for your administrative assistant.

12 JUDGE SIPPEL: I will be glad to accept them.

13 MR. COLE: Thank you.

14 JUDGE SIPPEL: Thank you.

15 MR. COLE: And if Ms. Parker who I suspect will  
16 ultimately have the pleasure of dealing with those has any  
17 questions she should certainly call my office and we would  
18 be happy to walk her through it, but I think it's fairly  
19 straightforward.

20 JUDGE SIPPEL: We'll probably collaborate on this  
21 one but thank you.

22 MR. COLE: Your Honor, Adams Communications has  
23 previously distributed to Your Honor and the other parties  
24 copies of a number of exhibits this afternoon, or this  
25 morning actually. I provided to the court reporter two

1 complete sets of those exhibits; one of which includes  
2 original signatures of the supporting witnesses, and I would  
3 like to identify those exhibits right now starting with a  
4 document which is not bound -- we have two documents which  
5 are not bound or in loose-leaf folders.

6           The first unbound document is entitled "Adams  
7 Communications Corporation Exhibit 1, Information Concerning  
8 Adams Communications Corporation." This consists of an  
9 unnumbered title page, then two pages of narrative, and I  
10 believe seven pages of resumes, and then a concluding page  
11 11 entitled "Declaration" bearing the signature of the  
12 witness Howard Gilbert. Total number of pages in this  
13 document, including the unnumbered title page is 12, and I  
14 would request that this be identified as Adams  
15 Communications Exhibit No. 1.

16           JUDGE SIPPEL: The document is so identified.

17                           (The document referred to was  
18                           marked for identification as  
19                           Adams Exhibit No. 1.)

20           MR. COLE: And Your Honor, I would offer this into  
21 evidence.

22           JUDGE SIPPEL: Is there any objection?

23           MR. HUTTON: Yes, sir.

24           JUDGE SIPPEL: You do have an objection?

25           MR. HUTTON: Yes.

1 JUDGE SIPPEL: All right.

2 MR. HUTTON: I object to the inclusion of the  
3 biographies of Howard N. Gilbert appearing at pages 4 and 5;  
4 Robert L. Hague appearing at pages 5 and 6; Manford  
5 Steinfeld appearing at pages 7 and 8; and Allen Robert Eumen  
6 appearing at pages 9 and 10. This information does not  
7 pertain to any of the relevant categories of information  
8 under the comparative issue as delineated in your order.

9 JUDGE SIPPEL: Okay, Mr. Cole?

10 MR. COLE: Well, Your Honor, these are offered  
11 purely for the purpose of background. We think that it is  
12 important for the Commission to have at least some idea of  
13 the identities of the individuals to whom it may be granting  
14 a construction permit, and we recognize that the information  
15 set forth in the resumes to which objection has been taken  
16 is not directly relevant under the categories or the  
17 classifications which Your Honor has indicated, and we can  
18 live with that. This is being provided for background  
19 purposes only.

20 JUDGE SIPPEL: Mr. Shook?

21 MR. SHOOK: No objection.

22 JUDGE SIPPEL: I'm going to treat it as  
23 identification and background information. It's probably  
24 more than I need, but I'll receive it. I will overrule the  
25 objection.

1           Do you have any other objections to anything else  
2   in here?

3           MR. HUTTON:  No.

4           MR. COLE:  Thank you, Your Honor.

5           JUDGE SIPPEL:  Then Exhibit 1 as identified, Adams  
6   Exhibit 1 is hereby received in evidence as Adams Exhibit 1.

7                               (The document referred to,  
8                               previously identified as Adams  
9                               Exhibit No. 1, was received in  
10                              evidence.)

11          JUDGE SIPPEL:  Next exhibit?

12          MR. COLE:  Your Honor, if I could, I would like to  
13   jump ahead to Exhibit No. 8 and then come back to 2 through  
14   7 just because Exhibit No. 8 is the only other unbound one  
15   and it is in a class by itself.  All the rest are kind of a  
16   certain type, and I think it will make life a little bit  
17   easier if we go to eight right away, if that's acceptable to  
18   Your Honor.

19          JUDGE SIPPEL:  That's fine.

20          MR. COLE:  Exhibit No. 8 is a document eight pages  
21   in length with an unnumbered cover page entitled "Adams  
22   Communications Corporation Exhibit 8, Comparative Coverage."  
23   It consists of the unnumbered title page, three pages of  
24   narrative, two pages of contour data, and two pages of maps.  
25   I would like to have this identified as Adams Exhibit No. 8,

1 comparative coverage.

2 JUDGE SIPPEL: I'll have the reporter identify  
3 that document as you have described it.

4 Do you have that, Ms. Reporter?

5 THE COURT REPORTER: Yes.

6 JUDGE SIPPEL: Okay.

7 (The document referred to was  
8 marked for identification as  
9 Adams Exhibit No. 8.)

10 MR. COLE: And I would offer this into evidence as  
11 Adams Exhibit No. 8.

12 JUDGE SIPPEL: Objection?

13 MR. HUTTON: No objection, sir.

14 JUDGE SIPPEL: None, Mr. Shook?

15 MR. SHOOK: Not so much an objection, Your Honor,  
16 it's just restating what I did this morning about the  
17 parties coming together and hopefully finding common ground.

18 MR. COLE: Your Honor, I apologize to Mr. Shook.  
19 That's a point well taken. That's certainly something  
20 that's -- we are not offering this as any kind of effort to  
21 undercut or backtrack on what we said this morning.  
22 Certainly we will pursue at some point a stipulation.

23 JUDGE SIPPEL: That's fine. We will receive it in  
24 evidence under those conditions.

25 (The document referred to,

1                               previously identified as Adams  
2                               Exhibit No. 8, was received in  
3                               evidence.)

4                   MR. COLE: Thank you, Your Honor.

5                   Now, Your Honor, if I could step back to documents  
6           which have been at least labeled as Exhibit 2 through 7.  
7           First, let me say by way of explanation and preliminary  
8           description that these are not so much direct case exhibits  
9           as they are in the nature of rebuttal exhibits relating to  
10          not Adams' own proposal, but Adams' of Reading  
11          Broadcasting's programming performance during the relevant  
12          license term. As such, they, in our view, are more in the  
13          nature of rebuttal.

14                  And while it may have been premature to prepare  
15          these, we did anticipate that there would be a direct case  
16          showing by Reading concerning its program performance, and  
17          we had obtained a number of documents during discovery,  
18          including logs and other descriptive materials about their  
19          programming, and we thought it best and most appropriate at  
20          least to undertake an initial analysis that we could share  
21          with the Court and the other parties as quickly as possible  
22          to give everybody an idea of where we were heading in terms  
23          of a rebuttal showing, and for that purpose we exchanged  
24          these along with our direct case exhibits.

25                  I would like to identify them today, and since

1     they are more in the nature of rebuttal rather than direct,  
2     my initial reaction would be not to offer them today but  
3     rather to wait till the end of the comparative, or the  
4     direct case presentations.  However, if Your Honor prefers,  
5     we can offer them today.  It's six of one and half a dozen  
6     of another to use, but I just want to say that these are  
7     more in the nature of rebuttal from our point of view.

8             JUDGE SIPPEL:  Okay, do you have any objection to  
9     the procedure of marking them and receiving them today, to  
10    the extent that there are no objections?

11            MR. HUTTON:  I don't object to the procedure, no.

12            JUDGE SIPPEL:  Any problem with this, Mr. Shook?

13            MR. SHOOK:  No, Your Honor.

14            JUDGE SIPPEL:  While we have the time, we might as  
15    well --

16            MR. COLE:  Let's go ahead and mark them and look  
17    at them or do you want to --

18            JUDGE SIPPEL:  No, let's mark them and bring them  
19    in --

20            MR. COLE:  Okay.

21            JUDGE SIPPEL:  -- if they are relevant, even for  
22    purposes of rebuttal, I think we can -- go ahead, you go  
23    ahead.

24            MR. COLE:  Your Honor, the first document I'd like  
25    to have identified for the record consists of an exhibit

1     which is 104 pages in length.  It is included in the green  
2     folder, the green loose-leaf folder, and I take this  
3     opportunity to point out that the Adams exhibits are color  
4     coded.

5           Each party, Your Honor, and the court reporter all  
6   have identical copies in identically colored folders so that  
7   for purposes of cross-examination we will be able to refer  
8   to that which is in the green folder as opposed to the black  
9   folder as opposed to the gray folder and so forth for ease  
10  of reference during the hearing. And while that will not  
11  suffice, I suppose, for findings purposes, it will  
12  certainly, I think facilitate matters during the hearing  
13  phase.

14 In any event, the document, 104 pages in length  
15 entitled "Adams Communications Corporation Exhibit 2,  
16 Composite Week Analysis of the Programming with Station  
17 WTVE(TV) During the 1989 - 1994 License Term, Introductory  
18 Statement and Appendices." And again, that is in the green  
19 folder.

20           We'd like to have that marked for identification  
21   as Adams Exhibit No. 2.

22 JUDGE SIPPEL: All right, the reporter will so  
23 mark that document in its entirety as Adams Exhibit 2 for  
24 identification.

25 (The document referred to was

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1 marked for identification as  
2 Adams Exhibit No. 2.)

3 MR. COLE: Thank you, Your Honor.

4 Getting into the specifics of the exhibit, once in  
5 the folder you will find an unnumbered title page and also  
6 there are unnumbered separated pages with tabs and I will  
7 not -- having said they are unnumbered separator pages with  
8 tabs with respect to this notebook, I will not say that with  
9 respect to all the rest of the notebooks but the same will  
10 be true with respect to all the rest of the notebooks.

11 Within tab No. 1 is a document which is five pages  
12 in length entitled "Introductory Statement." Within tab No.  
13 2, there is a document 73 pages in length entitled "Appendix  
14 A, Preliminary Identification of All Non-Network Programs  
15 Broadcast During the License Term." And in the third table  
16 which bears the legend Appendix B, there is a five page  
17 narrative statement entitled "Appendix B: Analysis of Non-  
18 Network Programming as Broadcast During the Composite  
19 Weeks," which is then accompanied by a multipage Attachments  
20 1 through 9, each of which includes a cover page for each  
21 individual attachment. And finally, there is a supporting  
22 declaration of the witness, Mr. Joseph Boothe.

23 And I -- well, if you want, Your Honor, I will  
24 offer this into evidence at this point.

25 JUDGE SIPPEL: Is Mr. Boothe, is he one of the

1 principals?

2 MR. COLE: No. Mr. Boothe is an employee of our  
3 law firm.

4 JUDGE SIPPEL: Is there any objection?

5 MR. HUTTON: Yes. First, I'd like to note that  
6 I'd like to have the opportunity of voir dire of Mr. Boothe.  
7 Secondly, I do have some specific objections to material  
8 appearing after Appendix B.

9 MR. COLE: After -- in the attachment you mean?

10 MR. HUTTON: In Appendix B. Attachment 2 to  
11 Appendix B consists of an excerpt of testimony of Daniel  
12 Bendetti. He was one of the witnesses deposed in the case.  
13 It appears to me that Adams is trying to do an end runaround  
14 the requirement of making its witnesses available. If they  
15 are going to offer testimony by Mr. Bendetti, it ought to be  
16 in affidavit form, and we ought to have the opportunity to  
17 cross-examine.

18 MR. COLE: Your Honor, if I might.

19 JUDGE SIPPEL: Well, do you want to make a further  
20 objection?

21 MR. HUTTON: Well, the only -- I think the only  
22 appropriate use of deposition testimony in this nature would  
23 be if the witness were dead or unavailable, and to my  
24 knowledge, that's not the case.

25 JUDGE SIPPEL: Well, that's generally true.

1       That's generally true.

2               Go ahead.

3               MR. COLE: Your Honor, for openers, Mr. Hutton had  
4       the opportunity to cross-examine him because this is a  
5       deposition conducted in this proceeding which I believe he  
6       attended. So you know, the notion of not having the witness  
7       available for its cross-examination, I think, is somewhat  
8       farfetched.

9               Furthermore, all the -- the deposition is simply  
10      provided as a -- as support for Mr. Boothe's conclusions set  
11      forth in his direct statement; that is, we were provided  
12      with a series of logs and other programming materials from  
13      Reading Broadcasting that we had to figure out what it all  
14      meant. Obviously, we were starting from ground zero.  
15      Through the deposition process, through review of the  
16      various files which they made available to us, through  
17      discovery, Mr. Boothe was able to make the determination as  
18      to which program -- you know, what programs were what, and  
19      that is his statement here that's presented as a basic  
20      exhibit here.

21              We recognize that there will come a point somebody  
22      might want to know how he came to the conclusions that he  
23      came to. I assume that is one reason that Mr. Hutton wants  
24      to voir dire Mr. Boothe, and that's fine. In order to make  
25      it as clear as possible, and ideally to short-circuit as

1 much as possible any confusion or questions on that score,  
2 we went through and Mr. Boothe, you know, provided for us  
3 the bases for his various conclusions about the various  
4 programs, whether they came from quarterly reports prepared  
5 and provided by Reading Broadcasting or depositions of  
6 current or former employees of Reading Broadcasting, what  
7 have you, and using those materials we assembled it so that  
8 we would have one complete package of how Mr. Boothe got to  
9 where he was, and that's what this is all about. This not  
10 an end runaround any requirement that we, you know, did not  
11 provide witnesses or what have you.

12 JUDGE SIPPEL: Who is Mr. Bendetti?

13 MR. COLE: He is a former station employee. I  
14 believe he was the general manager at one point, but I'm not  
15 sure about that.

16 MR. HUTTON: He was not the general manager.

17 MR. COLE: He was not the general manager?

18 JUDGE SIPPEL: But he was a station employee?

19 MR. HUTTON: Yes, he was.

20 JUDGE SIPPEL: During the relevant period?

21 MR. HUTTON: Yes, he was.

22 JUDGE SIPPEL: Okay. Does the Bureau want to take  
23 a position on this?

24 MR. SHOOK: I'm just wondering if whatever Mr.  
25 Bendetti has to say could qualify as an admission. I

1 haven't focused on that specifically, but it strikes me that  
2 that's a possibility given his role at the station.

3 MR. COLE: Also, Your Honor, just to short-circuit  
4 all of this, we do intend to call Mr. Bendetti to the  
5 witness stand, and so he will be available if Mr. Hutton  
6 wants to cross-examine him further.

7 JUDGE SIPPEL: He's going to be one of your  
8 witnesses?

9 MR. COLE: That's my understanding from Mr.  
10 Bechtel is the one who is working on that element of the  
11 case, but that's my understanding, yes, sir.

12 MR. HUTTON: I don't get it. How is he going to  
13 be called to the witness stand? We've already been through  
14 the process of identifying our witnesses.

15 MR. BECHTEL: He's a rebuttal witness. We're not  
16 ready to identify him yet -- then yet. We're not done with  
17 your cross-examination of your witnesses, but he is one of  
18 our proposed rebuttal witnesses.

19 MR. HUTTON: Well --

20 MR. BECHTEL: And certainly in light of the  
21 concern you just raised, we'll be sure and bring him.

22 MR. HUTTON: Well, then, it's certainly not  
23 appropriate to provide his testimony as part of the case  
24 now.

25 JUDGE SIPPEL: Well, say again what it is the

1 purpose -- what is this testimony about and what's the  
2 purpose? It's obviously -- you say it's for Mr. Boothe's  
3 benefit?

4 MR. COLE: Yes.

5 JUDGE SIPPEL: And what does it do? What focus  
6 does it give Mr. Boothe?

7 MR. COLE: In analyzing the station's programs,  
8 Mr. Boothe reviewed the logs for the composite week we had  
9 selected, and determined which -- what the nature of the  
10 non-Home Shopping Network programs broadcast during the  
11 composite week were. He made a list of those programs.

12 He then went down the list and tried to determine  
13 what the nature of each program was because you start off,  
14 Your Honor, with a list and if you start off at Appendix B,  
15 page 1 of Appendix B is where the list beings. You look at  
16 a program called "Today with Marilyn."

17 Now at that point Mr. Boothe has no idea starting  
18 off what "Today with Marilyn" is all about. He looked  
19 through the various program records made available by  
20 Reading Broadcasting, and he found that "Today with Marilyn"  
21 and that is testimony is that it was produced by Marilyn  
22 Hickey Ministries in Colorado, and et cetera, et cetera.

23 In the list of program that was included was a  
24 program called "Ask-KARR3," Ask hyphen K-A-R-R-3, and that  
25 shows up on the first page of Appendix B, the next to the

1 last entry in the column of programs listed.

2 Mr. Boothe, as I understand it, was unable to find  
3 any record or any information about that program in the  
4 written information provided by Reading Broadcasting. But  
5 during Mr. Bendetti's testimony, Mr. Bendetti happened to  
6 mention or was questioned about it and described the nature  
7 of Ask-KARR3. Therefore, we have Mr. Bendetti under oath in  
8 a deposition in this proceeding explaining or providing more  
9 information about what Ask-KARR3 was.

10 Mr. Boothe reviewed Mr. Bendetti's testimony and  
11 from that review concluded or his conclusions are set forth  
12 in this exhibit and the -- I guess, the Bendetti testimony  
13 is simply included to, you know, demonstrate where he got  
14 the information from.

15 JUDGE SIPPEL: All right. I will allow this to  
16 come in in the fashion that it's presented provided that Mr.  
17 Hutton has the right to put in any other portions of his  
18 deposition.

19 MR. COLE: Oh, no objection to that, Your Honor,  
20 at all.

21 JUDGE SIPPEL: And he certainly can ask Mr. Boothe  
22 questions with respect to just how much does he know about  
23 the deposition. In other words, he can use the deposition  
24 also in a way of cross-examining Mr. Boothe, not in the same  
25 fashion, of course, but I think you all know what I'm

1 getting at.

2 I'm trying to give Mr. Hutton as much leeway as I  
3 can to deal with the evidence, but I don't see any problems  
4 with bringing it in for this limited purpose. I'm going to  
5 overrule the objection.

6 Is there another objection to the exhibit?

7 MR. HUTTON: No.

8 JUDGE SIPPEL: Anything from the Bureau, Mr.  
9 Shook?

10 MR. SHOOK: No, Your Honor.

11 JUDGE SIPPEL: Then I am going to receive into  
12 evidence at this time the document in the green binder which  
13 has been identified as Adams Exhibit No. 2.

14 (The document referred to,  
15 previously identified as Adams  
16 Exhibit No. 2, was received in  
17 evidence.)

18 MR. COLE: Thank you, Your Honor.

19 If I may now refer to Your Honor and the rest of  
20 the parties and Madam Reporter to the black binder which is  
21 entitled "Adams Communications Corporation Exhibit 3,  
22 Composite Week Analysis of the Programming of Station  
23 WTVE(TV) During the 1989 - 1994 License Term, Volume 1: 1989  
24 to 1990."

25 This is a document 123 pages in length, consisting

1 of an unnumbered title page, a single page headed "Summary  
2 Analysis for 1989 to 1990 Composite Week," and then  
3 individual tabs, each of which consist of the same basis  
4 format which I will describe in a minute for each of seven  
5 days in the composite week during the 1989 to 1990 license  
6 term.

7 And I'd like to have this identified for the  
8 record as Adams Communications Exhibit No. 3.

9 JUDGE SIPPEL: The reporter will so identify the  
10 black binder as Exhibit 3 for identification.

11 (The document referred to was  
12 marked for identification as  
13 Adams Exhibit No. 3.)

14 MR. COLE: Your Honor, Exhibit No. 3 and the four  
15 that follow this, which will be numbered 4, 5, 6 and 7, are  
16 in effect exhibits or attachments to or appendices or  
17 adjuncts to that which has been received into evidence as  
18 Exhibit No. 2 for Adams; that is, it is -- this consists of  
19 or these five volumes reflect the composite week analyses  
20 undertaken by Adams of Reading's programming during the  
21 license term in 1989 to 1994. Each separate volume refers  
22 to relates to a single year within the license term. The  
23 black binder, Exhibit No. 3, is 1989 to 1990.

24 The format we have utilized is for each day of the  
25 composite week we have included, first, a daily analysis for

1     that day which provides certain information derived from  
2     materials provided by Reading Broadcasting concerning its  
3     programming.

4             Secondly, separated by a blue divider, there is  
5     then the TV Discrepancy and Equipment Failure Report and  
6     official log for the dates in question; again, obtained from  
7     Reading Broadcasting during discovery.

8             And then, again separated by a blue divider, are  
9     excerpts from the Reading Eagle Newspaper with a cover page  
10    in each situation, highlighting some of the headlines in the  
11    excerpts. And the Reading newspaper excerpts relates to the  
12    two or three days immediately before the date in question  
13    and in some instances the day after the date in question.

14            And that is the format which is utilized both in  
15    Adams Exhibit No. 3 throughout and also in Adams Exhibits  
16    which will be identified, 4, 5, 6 and 7.

17            And having identified it, I would offer this into  
18    evidence as Adams Exhibit No. 3.

19            JUDGE SIPPEL: Objection?

20            MR. HUTTON: Yes. I object to the newspaper  
21    information appearing in all of these exhibits. The first  
22    example is pages 17 through 24. I object on grounds of  
23    relevance. The Commission doesn't require that any station  
24    broadcast information similar to what the local newspaper  
25    broadcasts. It's impossible for you to draw any conclusion

1 from this, and the Commission is not in the business of  
2 second guessing the programming judgment of licensees, so  
3 it's impossible to draw any meaningful information from  
4 this. It's also hearsay. You know, Mr. Boothe doesn't know  
5 anything about the underlying information.

6 So I would object on grounds of relevance and  
7 hearsay.

8 JUDGE SIPPEL: Okay. What does the Bureau think  
9 about this kind of evidence, Mr. Shook?

10 MR. SHOOK: My feeling at this point is that it  
11 remains to be seen whether any link can be made between the  
12 news articles that appear and the problems, needs and  
13 interests of the community that I suspect will be the  
14 subject of cross-examination.

15 MR. COLE: Well, Your Honor, for openers, it's not  
16 hearsay. We are not offering it necessarily for the truth  
17 of the matters asserted in the newspaper article. We are  
18 merely -- you know, to the extent that we're offering it for  
19 any truth concerning the substance of the articles at all,  
20 it is the truth that the Reading Eagle for whatever reason  
21 thought these articles were of importance at one level or  
22 another to the Reading public.

23 As far as relevance is concerned, they are  
24 directly relevant because in Mr. Mattmiller's own direct  
25 testimony, which was received into evidence this morning at

1 the instance of Reading Broadcasting, Mr. Mattmiller himself  
2 said that during the license terms when Reading Broadcasting  
3 began to seek out the needs and interests of Reading, it  
4 went to the Reading Eagle. This is a source authority for  
5 their -- you know, their starting point, and a source  
6 authority for what the station itself viewed as problems,  
7 needs and interests in Reading. We think --

8 JUDGE SIPPEL: Where does it say that?

9 MR. COLE: Just a minute, Your Honor.

10 JUDGE SIPPEL: Exhibit 6, Reading Exhibit 6.

11 (Pause.)

12 MR. COLE: It's at paragraph six --

13 JUDGE SIPPEL: In Reading --

14 MR. COLE: It's Mr. Mattmiller's testimony, and I  
15 believe this is Exhibit 6 on page 7, paragraph 13.

16 "Development of the ascertainment" -- which reads as  
17 follows, "Development of the ascertainment process took the  
18 following form: Master control operators assisted in  
19 clipping article from the Reading Times Eagle. Ms. Bradley  
20 instructed the MCOs to perform one paragraph write-ups on  
21 the articles that were clipped out and Ms. Bradley tabulated  
22 and reviewed the results, extrapolating concerns and issues  
23 that form the basis for subsequent meetings with Mr.  
24 Bendetti to determine upcoming topics and guests for shows."

25 MR. HUTTON: Your Honor, I'd like to respond to

1     that.

2                 JUDGE SIPPEL:   You may.

3                 MR. HUTTON:   You cannot make that -- he is  
4     offering and asking you to make an inferential leap.  If we  
5     had wanted to burden the record with thousands of pages of  
6     clippings from the Reading newspaper, we could have done so,  
7     and counsel for Adams is well aware of that because we  
8     produced cartons and cartons of clippings as part of our  
9     document production effort in this case.

10                If Mr. Cole wants to cross-examine Mr. Mattmiller  
11     with newspaper articles saying, you know, why didn't the  
12     station air any programming about the county landfill, he  
13     can do so.  But you can't assume that because an article  
14     appeared on a particular day around a -- well, on a  
15     particular day that the station wasn't conducting  
16     appropriate ascertainment.

17                He's trying to, (a) offer this actually -- it's  
18     actually best to use this cross-examination material.  He's  
19     trying to present it to show that we haven't done something  
20     that we in fact have done.

21                JUDGE SIPPEL:   Well, that's what cross-exam is all  
22     about.  I mean, in a sense, Mr. Cole has tipped his hand, in  
23     a sense.  I don't have any problem -- you know, I am very  
24     much impressed with the fact that there is testimony in the  
25     record now that it was -- the newspapers were relied upon by